IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11252 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A M C - Petitioner(s)

Versus

DAHYABHAI MAFATBHAI PARMAR & 1 - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MS ROOPAL R PATEL for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 13/01/2006

ORAL JUDGMENT

1. This petition is directed against award dated 16th Febuary 2001 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.592 of 1991

whereby the petitioner was directed to pay full back wages and allowances to the respondents for the period commencing from 26th December 1988 to 27th October 1989.

2. The short facts of the case are that the respondents herein are the employees of the petitioner Corporation. A criminal complaint involving them in a murder case was filed and the respondents were arrested and taken into police custody on 26th December 1988. They remained in Jail till their acquittal by competent court on 27th October 1989. The respondents did not intimate about the said incident and their imprisonment to the petitioner Corporation. The petitioner Corporation issued notices to the respondents due to their long absenteeism.

3. The respondents, after their acquittal claimed back wages for the period of absenteeism which was registered as Reference (IT) no.592 of 1991. The Tribunal, by award dated 16th February 2001 awarded full back wages and allowance for the aforesaid period.

4. Mr. Munsha for the petitioner submitted that the Tribunal while considering the case of the respondents has committed an error in granting the wages during the period in which they had not worked. He submitted that the rule on which the Tribunal has placed reliance is an enabling provision for

the petitioner to suspend during that period. He submitted that if no order is passed, the court cannot compel an employer to invoke provisions of the regulations which they have not invoked for suspension. Mr. Munshaw further submitted that since no order was passed for suspending the employees and since they have not worked during that period, they are not entitled to any wages. He further submitted that the respondents should have sought sanction for leave if they have excess leave in their credit for the period in question. This was also not done and therefore the impugned award requires to be quashed and set aside.

5. Ms Roopal Patel for the respondents supported the order of the Tribunal and submitted that the Tribunal was justified in relying upon the provisions of Regulation 20(E)(a) of the Manual. The said regulation reads as under:

> “20.(E)(a)- A servant against whom proceedings have been taken either for his arrest for debt, or on criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any period, during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances other than any subsistence allowance that may be granted in accordance with the principles laid down in Regulation No.20(B) for such period until the termination of the proceedings taken against him or until he is released from detention and allowed to

> rejoin duty as the case may be. An adjustment of his pay and allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer or servant being acquitted of blame or if the proceedings taken against him were for his arrest for debt of its being proved that the Officer's liability arose from circumstances beyond his control or the detention being held by any competent authority to be unjustified."

Ms Patel submitted that in identical situation, the respondent has regularised the suspension period of one Shri Jethabhai Lakhabhai. She further submitted that in view of the deemed suspension, they are entitled for the wages during the period they were under judicial custody. She has also relied upon a decision rendered by this Court dated 24.9.2004 in Special Civil Application No.6122 of 1994.

6. As a result of hearing and perusal of the record I am of the view that the Tribunal has committed an error in awarding wages to the respondents for the period in question. Admittedly the respondents were absent from duty in view of the fact that they were involved in a murder case under section 302 of IPC. From 26th December 1988 till 27th October 1989 they were under custody. The respondents have not applied for leave nor the same was sanctioned. There is nothing on record to show that the respondents have ever applied for leave. No suspension order was also passed. Therefore, I am

of the view that the respondents cannot invoke Regulation 20(E)(a) of the Manual. When the respondents have remained on unauthorised leave, and when they did not even inform the petitioner who is their employer, no such benefits can be granted to the respondents especially when they were under custody. Since there was no leave, it cannot be treated as deemed suspension. At the most the respondents could have made a request for sanction of their leave if they were having sufficient leave in their credit. Having not done so, the Industrial Court was not right in granting back wages. What is weighed with the Tribunal is that the workmen have been acquitted of the charge of murder by Sessions Court. However, mere acquittal will not justify their unauthorised absence from duty. Merely because the petitioner has not initiated departmental proceedings against the respondent cannot be a premium for their unauthorised absence. Further, this is not a case of dismissal or retrenchment on the part of the employer as a result of which the employees remained out of job. I am, therefore, of the view that the Industrial Tribunal has erroneously awarded wages to the respondents.

7. It is also required to be noted that Regulation 20(E)(a) is an enabling provision for an employer to put an employee under suspension which cannot be claimed as a matter of right by the employee. Therefore, the Tribunal has committed an error in presuming deemed suspension and has tried to regularise the unauthorised leave. In my view, such a declaration by the

Tribunal is contrary to the principle of law.

8. In the case of Jethabhai Lakhabhai (supra) he was suspended by order dated 16th March 1993 and the suspension period was regularised after acquittal. In the present case there was no suspension and regulariaation. In the case of Special Civil Application No.6122 of 1995 also the employees were suspended and again that period was regularised under Rule 152 of the Bombay Civil Service Rule. Therefore the petitioner cannot take any assistance from the aforesaid decisions.

9. In the premises aforesaid, this petition is allowed. The impugned award dated 16th February 2001, passed the Industrial Triubnal, Ahmedabad, in Reference (IT) No.592 of 1991, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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